

J. Stephen Gehring, Private Citizen
Bobby Jones, Private Citizen
Lois Jones, Private Citizen
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Payson, Arizona [PZ 85541]
(928) 474-9859
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In Propria Persona

OPEN MEETING AGENDA ITEM



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ORIGINAL

Arizona Corporation Commission

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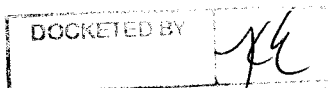
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AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

SUSAN BITTER SMITH, Chairman
BOB BURNS, Commissioner
DOUG LITTLE, Commissioner
BOB STUMP, Commissioner
TOM FORESE, Commissioner



Before the Arizona Corporation Commission

J. Stephen Gehring, Bobby Jones, Lois
Jones Private Citizens, Injured Parties,
Complainants,

vs.

PAYSON WATER CO. INC./BROOKE
UTILITIES INC.
Respondents.

DOCKET NO. W-03514A-12-0008

**MOTION FOR AN EXTENSION
OF TIME TO RESPOND AND
FILE EXCEPTIONS TO THE
RECOMMENDATIONS OF
THE ADMINISTRATIVE LAW
JUDGE TO THE COMMISSIONERS**

NOW COMES, the Complainants J. Stephen Gehring, Bobby Jones and Lois Jones, pursuant to A.A.C. R14-3-110 (B) for an extension of time and to continue the required response date of January 14, 2016 at 4:00 p.m. to file exceptions to the recommendations of the Administrative Law Judge to the Commissioners and to continue hearing by the Commissioners for an additional Sixty (60) to Ninety (90) Days for the following reasons:

1. The Administrative Law Judges recommendations (67 pages) dated November 23, 2015 and mailed to the Complainants on the same day were only received by the Complainants on November 27, 2015 the day after Thanksgiving;
2. Complainants were required to respond by December 2, 2015 at 4:00 p.m. where in fact Complainants were not even given Ten days to respond by the required date of December 2, 2015 or to prepare a proper response and file exceptions to the recommendations or to prepare for a hearing tentatively scheduled for December 8th and 9th, 2015;

3. The Complainants requested and were given an extension of time until January 4, 2016 at 4:00 p.m. which was mailed on December 4, 2015 and not received by the Complainants until December 9, 2015 giving only Twenty-Six (26) days to respond;
4. In short the Complainants have not had enough time to respond and need additional time to properly respond and to acquire documentation so cited in the footnotes of the judge's recommendations for review. It would be of considerable benefit to the Complainants' ability to respond if the administrative law judge would have supplied certain documentation such as the Smith Exhibits and Transcripts portions which the administrative law judge has relied upon and which have not been shown nor proven to be relevant, admissible or prudent to use by the judge in her recommendations to the Commission since they were submitted in or are a part of another case over a year after the hearing in this proceeding;
5. A real problem exists whereby if none of the Commissioners are learned in the law or understand it for that matter, and are entirely dependent on Staff to influence a decision, then there is the appearance of misrepresentation and/or conflict of interests in a presentation or recommendation to the Commission, designed to persuade them to act in a desired way that is very well not be based on real truth, fact and evidence and that has not been submitted in this proceeding but rather on undue influences of elements and misrepresentations by Respondents that should ultimately be prosecuted for extreme consumer fraud;
6. The Complainants are working people who operate small business in the Payson area which are their full time jobs; and they have been in the middle of the Christmas and New Year holidays which are a busy time for them. Wherefore the Complainants do not have the luxury of spending eight to ten hours a day to review, research, re-examine evidence, acquire copy of the Smith documents, exhibits and transcripts (which the ALJ relied upon heavily) and to accurately compose their response and prepare for a hearing in these matters in the time allotted;
7. The Administrative Law Judge has taken nearly Three and one half years to make her recommendations to the Commissioners where in fact such recommendations should have been made after conclusion of the hearings on June 26th and 27th 2012 within Ninety days and has mixed the evidence from both cases as if they were one case. Apples are not oranges and the evidence in the separate case of Smith cannot be used in the process of judicial administrative recommendations to the Commission in this case for the simple fact that none of the Smith evidence or transcript was ever a part of nor entered into evidence in these proceedings. There is no reasonable or legal logic to include, use or make recommendations to the Commission in these proceedings using evidence and transcript associated with another proceeding. It is like using evidence submitted in a murder case in the final conclusions and recommendations in a traffic case;
8. Throughout previous proceedings the Respondents showed nothing other than an arrogant and egotistical contempt for the Commission, its Administrative Law Judge and the Complainants by refusing to comply

with the Complainants' Subpoena(s), Data Requests, requests for Discovery and Disclosure and intentionally ignored Procedural Orders;

9. The real concern here has been why have the Commissioners and Administrative Law Judge Nodes did not act appropriately or respond accordingly to their prescribe duties and responsibilities and enforce the Subpoena(s) as required by law and clearly shown and proven without question;
10. The Complainants were left unprepared for the Hearing on the Complaint scheduled for June 26, 2012 at 10:00 a. m. and arbitrarily denied the Discovery and Disclosure requested by Judge Nodes without rhyme, reason nor lawful authority. Discovery and Disclosure cannot arbitrarily be denied. The Hearing Scheduled on the Complaint could not take place on that date while in fact there remained numerous Discovery and Disclosure issues unresolved and administrative process wanting but was arbitrarily ordered to proceed anyway by Judge Nodes.

Pursuant to the Arizona Code of Judicial Conduct:

Cannon 3. A judge shall perform the duties of judicial office impartially and diligently.

Cannon 3 A (1). A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

Cannon 3 B (8). A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Cannon 3 B (8) Commentary.

"In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay."

Containing costs while preserving fundamental rights of parties, also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices avoidable delays and unnecessary costs.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

Article 2 § 11 of the Arizona Constitution requires that "justice in all cases shall be administered openly, and without unnecessary delay."

Article 6, § 21 provides that "Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the date of submission thereof. The Supreme Court shall by rule provide for the speedy disposition of all matters not decided within such period."

"The administrative law judge's role is analogous to that of a trial judge. As such, the ALJ is vested with comparable hearing and decision powers." **Fulwood v. Heckler, 594 F. Supp. 540, 547 (D. D. C. 1984).**

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The Complainants discovered additional evidence that they provided as required in disclosure and were waiting for additional documentation from another source that was disclosed as soon as they had it in hand. However, that evidence was not given due consideration due to the extreme bias and prejudice of Judge Nodes.

There was never established a final due date for the conclusion of Discovery and Disclosure as the Respondents, the Commission, the Administrative Law Judge are formally and knowingly aware.

The Complainants’ Data Requests, demands for compliance with issued Subpoenas and any other requests for Discovery and Disclosure materials can not be shown nor construed to be invalid or untimely filed as the Respondents have or would misrepresent.

Respondent “may not claim privilege for corporate records. in every such case the records kept are not within the protection of the self-incrimination privilege.” **Shapiro v. United States**, 335 U. S. 1, 58 (1948) “required records are also not protected by the 5th Amendment privilege against self-incrimination **Craib v. Bulmash**, 777, P.2d 1120 (Cal. 1989) “records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restriction validly established” **Shapiro v. United States**, 335 U. S. 1, 58 (1948) Id at 33.

“Agency subpoena power is not confined to those over whom it may exercise regulatory jurisdiction, but extends to any persons from whom it can obtain information relevant and material to its legitimate inquiry.” **FCC v. Cohn**, 154 F. Supp. 899, 906 (S.D.N.Y. 1957).

“For an agency to exercise subpoena power, it need not show that it has regulatory jurisdiction over the person subpoenaed.” **Freeman v. Fidelity-Philadelphia Trust Co.**, 248 F. Supp. 487 492 (E.D. Pa. 1965).

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"The unduly broad scope of an administrative subpoena may no longer be set up as a defense in the enforcement proceeding." **FTC v. Crafts**, 355 U.S. 9 (1955) and **Pope & Talbot v. Smith**, 340 P.2d 960 (Ore. 1959).

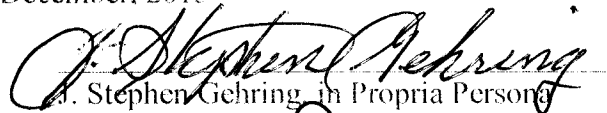
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"The fact that compliance might call for thousands of documents is not enough to show the subpoena is unduly burdensome." **NLRB v. G.H.R. Energy Corp.**, 707 F.2d 110 (5th Cir. 1982). The very purpose of the administrative subpoena is to discover and procure evidence, not to prove a pending case, but to make a case if, in the agency's judgment, the facts thus discovered should justify doing so. **EEOC v. Bay Shipbuilding Corp.**, 668 F.2d 304,312 (7th Cir. 1981).

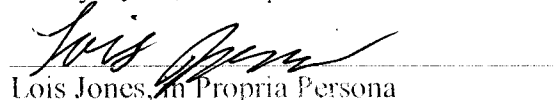
Respondents and certain witnesses refused to comply with the Subpoena, Data Requests, Discovery and Disclosure without justification and the Administrative Law Judge and the Commissioners failed in their prescribed duties and authority and failed to properly impose compliance and sanctions.

The Complainants for all of the reasons, stated herein and above requests of the Commission and the Administrative Law Judge to grant Complainants an extension of time additional, Sixty (60) to Ninety (90) days continue to file exceptions to the recommendations of the Administrative Law Judge to the Commissioners in these matters.

Respectfully submitted this 31st day of December, 2015


J. Stephen Gehring, in Propria Persona


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Lois Jones, in Propria Persona

CERTIFICATE OF SERVICE

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DOCKET CONTROL
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

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Jason Williamson, President
PAYSON WATER CO., INC.
7581 East Academy Boulevard, Suite 229
Denver, CO 80230

Robert T. Hardecastle
P. O. Box 82218
Bakersfield, Ca. 93380

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Thomas Broderick, Director
Utilities Division
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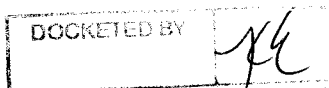
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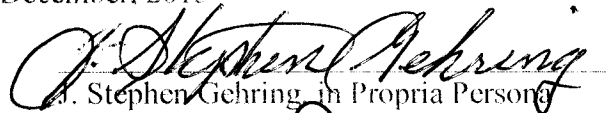
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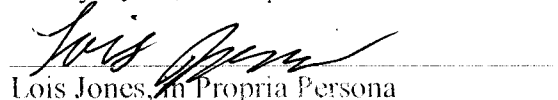
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7581 East Academy Boulevard, Suite 229
Denver, CO 80230

Robert T. Hardecastle
P. O. Box 82218
Bakersfield, Ca. 93380

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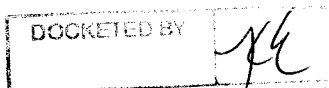
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4. In short the Complainants have not had enough time to respond and need additional time to properly respond and to acquire documentation so cited in the footnotes of the judge's recommendations for review. It would be of considerable benefit to the Complainants' ability to respond if the administrative law judge would have supplied certain documentation such as the Smith Exhibits and Transcripts portions which the administrative law judge has relied upon and which have not been shown nor proven to be relevant, admissible or prudent to use by the judge in her recommendations to the Commission since they were submitted in or are a part of another case over a year after the hearing in this proceeding;
5. A real problem exists whereby if none of the Commissioners are learned in the law or understand it for that matter, and are entirely dependent on Staff to influence a decision, then there is the appearance of misrepresentation and/or conflict of interests in a presentation or recommendation to the Commission, designed to persuade them to act in a desired way that is very well not be based on real truth, fact and evidence and that has not been submitted in this proceeding but rather on undue influences of elements and misrepresentations by Respondents that should ultimately be prosecuted for extreme consumer fraud;
6. The Complainants are working people who operate small business in the Payson area which are their full time jobs; and they have been in the middle of the Christmas and New Year holidays which are a busy time for them. Wherefore the Complainants do not have the luxury of spending eight to ten hours a day to review, research, re-examine evidence, acquire copy of the Smith documents, exhibits and transcripts (which the ALJ relied upon heavily) and to accurately compose their response and prepare for a hearing in these matters in the time allotted;
7. The Administrative Law Judge has taken nearly Three and one half years to make her recommendations to the Commissioners where in fact such recommendations should have been made after conclusion of the hearings on June 26th and 27th 2012 within Ninety days and has mixed the evidence from both cases as if they were one case. Apples are not oranges and the evidence in the separate case of Smith cannot be used in the process of judicial administrative recommendations to the Commission in this case for the simple fact that none of the Smith evidence or transcript was ever a part of nor entered into evidence in these proceedings. There is no reasonable or legal logic to include, use or make recommendations to the Commission in these proceedings using evidence and transcript associated with another proceeding. It is like using evidence submitted in a murder case in the final conclusions and recommendations in a traffic case;
8. Throughout previous proceedings the Respondents showed nothing other than an arrogant and egotistical contempt for the Commission, its Administrative Law Judge and the Complainants by refusing to comply

with the Complainants' Subpoena(s), Data Requests, requests for Discovery and Disclosure and intentionally ignored Procedural Orders;

9. The real concern here has been why have the Commissioners and Administrative Law Judge Nodes did not act appropriately or respond accordingly to their prescribe duties and responsibilities and enforce the Subpoena(s) as required by law and clearly shown and proven without question;
10. The Complainants were left unprepared for the Hearing on the Complaint scheduled for June 26, 2012 at 10:00 a. m. and arbitrarily denied the Discovery and Disclosure requested by Judge Nodes without rhyme, reason nor lawful authority. Discovery and Disclosure cannot arbitrarily be denied. The Hearing Scheduled on the Complaint could not take place on that date while in fact there remained numerous Discovery and Disclosure issues unresolved and administrative process wanting but was arbitrarily ordered to proceed anyway by Judge Nodes.

Pursuant to the Arizona Code of Judicial Conduct:

Cannon 3. A judge shall perform the duties of judicial office impartially and diligently.

Cannon 3 A (1). A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

Cannon 3 B (8). A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Cannon 3 B (8) Commentary.

"In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay."

Containing costs while preserving fundamental rights of parties, also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices avoidable delays and unnecessary costs.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

Article 2 § 11 of the Arizona Constitution requires that "justice in all cases shall be administered openly, and without unnecessary delay."

Article 6, § 21 provides that "Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the date of submission thereof. The Supreme Court shall by rule provide for the speedy disposition of all matters not decided within such period."

"The administrative law judge's role is analogous to that of a trial judge. As such, the ALJ is vested with comparable hearing and decision powers." **Fulwood v. Heckler, 594 F. Supp. 540, 547 (D. C. 1984).**

“Administrative Law Judges are not limited to the position of referee between contending parties; their function is “to see that facts are clearly and fully developed.” “They are not required to sit idly by and permit a confused or meaningless record to be made.” **Bethlehem Steel Co. v. NLRB**, 120 F.2d 641, 652 (D. C. Cir. 1941).

“The court held that by disregarding those precedents, the Commission had acted arbitrarily and capriciously. The Commission may not decide a case one way today and a substantially similar case another way tomorrow.” **Doubleday Broadcasting Co. v. FCC**, 655 F.2d 417, 423 (D. C. Cir. 1981).

“There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case.” **Mary Carter Paint Co. v. FTC**, 333 F.2d 654, 660 (5th Cir. 1964).

“The courts are increasingly requiring agencies that change their minds to explain why, through a reasoned analysis indicating that prior policies are being deliberately changed.” **Moltenry v. Bond**, 668 F.2d 1185 (11th Cir. 1982); **Gaton Rouge Contractors v. FMC**, 655 F.2d 1210 (D. C. Cir. 1981).

The Complainants discovered additional evidence that they provided as required in disclosure and were waiting for additional documentation from another source that was disclosed as soon as they had it in hand. However, that evidence was not given due consideration due to the extreme bias and prejudice of Judge Nodes.

There was never established a final due date for the conclusion of Discovery and Disclosure as the Respondents, the Commission, the Administrative Law Judge are formally and knowingly aware.

The Complainants’ Data Requests, demands for compliance with issued Subpoenas and any other requests for Discovery and Disclosure materials can not be shown nor construed to be invalid or untimely filed as the Respondents have or would misrepresent.

Respondent “may not claim privilege for corporate records. in every such case the records kept are not within the protection of the self-incrimination privilege.” **Shapiro v. United States**, 335 U. S. 1, 58 (1948) “required records are also not protected by the 5th Amendment privilege against self-incrimination **Craib v. Bulmash**, 777, P.2d 1120 (Cal. 1989) “records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restriction validly established” **Shapiro v. United States**, 335 U. S. 1, 58 (1948) Id at 33.

“Agency subpoena power is not confined to those over whom it may exercise regulatory jurisdiction, but extends to any persons from whom it can obtain information relevant and material to its legitimate inquiry.” **FCC v. Cohn**, 154 F. Supp. 899, 906 (S.D.N.Y. 1957).

“For an agency to exercise subpoena power, it need not show that it has regulatory jurisdiction over the person subpoenaed.” **Freeman v. Fidelity-Philadelphia Trust Co.**, 248 F. Supp. 487 492 (E.D. Pa. 1965).

“Testimony and records pertinent to a legitimate investigation may be subpoenaed even though the subpoena is directed to a third person who is not subject to the agency’s jurisdiction and who

is not the subject of the investigation." **United States v. Marshall Durbin & Co.**, 363 F.2d 1 (5th Cir. 1966); **Freeman v. Brown Bros. Harriman & Co.**, 357 F.2d 741 (2d Cir. 1966).

"All that is necessary is that the records be relevant to an investigation that is within the agency's authority." **Redding Pine Mills v. State Bd.**, 320 P.2d 25 (Cal. App. 1958) **State v. Mees**, 49 N.W.2d 386 (Minn. 1951).

"The unduly broad scope of an administrative subpoena may no longer be set up as a defense in the enforcement proceeding." **FTC v. Crafts**, 355 U.S. 9 (1955) and **Pope & Talbot v. Smith**, 340 P.2d 960 (Ore. 1959).

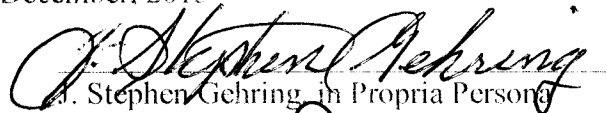
"Broadness alone is not sufficient justification to refuse enforcement of a subpoena." **FTC v. Texaco**, 555 F.2d 862, 882 (D. C. Cir. 1977).

"The fact that compliance might call for thousands of documents is not enough to show the subpoena is unduly burdensome." **NLRB v. G.H.R. Energy Corp.**, 707 F.2d 110 (5th Cir. 1982). The very purpose of the administrative subpoena is to discover and procure evidence, not to prove a pending case, but to make a case if, in the agency's judgment, the facts thus discovered should justify doing so. **EEOC v. Bay Shipbuilding Corp.**, 668 F.2d 304,312 (7th Cir. 1981).

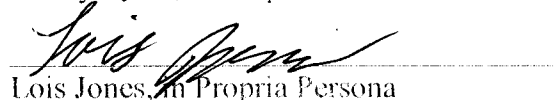
Respondents and certain witnesses refused to comply with the Subpoena, Data Requests, Discovery and Disclosure without justification and the Administrative Law Judge and the Commissioners failed in their prescribed duties and authority and failed to properly impose compliance and sanctions.

The Complainants for all of the reasons, stated herein and above requests of the Commission and the Administrative Law Judge to grant Complainants an extension of time additional, Sixty (60) to Ninety (90) days continue to file exceptions to the recommendations of the Administrative Law Judge to the Commissioners in these matters.

Respectfully submitted this 31st day of December, 2015


J. Stephen Gehring, in Propria Persona


Bobby Jones, in Propria Persona


Lois Jones, in Propria Persona

CERTIFICATE OF SERVICE

The Original and 13 copies of the foregoing Motion have been mailed this 31st day December, 2015 to the following:

DOCKET CONTROL
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Copies of the foregoing Motion have been mailed this 31st day December, 2015 to the following:

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By: J. STEPHEN GEHRING